IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

Suraj Narain Khinchi

Versus

Prathviraj Singh Dhawan

S.B. CIVIL REVISION PETITION NO.625/2001

DATE OF ORDER : 05/10/2006

Hon'ble Shri Justice Ajay Rastogi

Shri M.M. Ranjan, for petitioner
Shri Rajesh Kapoor, for respondent

BY THE COURT:

Instant revision petition has been filed by the defendant-petitioner against the order dated 14th March, 2001 whereby the application filed by the defendant under O.7 R.11 CPC was rejected.

Facts in brief for adjudication of the dispute, are that the plaintiff-non-petitioner filed a suit for permanent injunction in February, 1995 alleging that the defendant-petitioner executed an agreement dated 17th September, 1989 in favour of the plaintiff-non-petitioner for sale of land bearing Khasra Number situated in village Mousar, District Ajmer, of which a reference has been made in Para 2 of the plaint. It has further been alleged that possession of the land has been handed over to the plaintiff-non-petitioner. In Para 13 of the plaint, a further reference has been made that the suit land is situated in Abadi Area. Paras 2 & 13 of the plaint which are relevant, reproduced as under:

2- यह कि भूमि का विवरण निम्न हैं:-

क्रं.स.	खाता सं.	खसरा नं.		रकबा	स्थान
		पुराना	नया		
1	58	651	877	18 बिस्वा	ग्राम नोसर

13- यह कि जहां सम्पति स्थित है उस सम्पति के आस-पास आबादी है और आबादी एरिया में ही विवादग्रस्त भूमि स्थित हैं।

The petitioner-defendant after service of notice filed application under O.7 R.11 CPC with an objection that a reference has been made in Para 2 of the plaint with respect to agricultural land for which injunction has been sought, which is barred by Section 207 of Rajasthan Tenancy Act. Accordingly, the dispute, which has been raised, is not triable before the civil court. The learned trial Judge allowed the application of the defendant-petitioner vide order dated 30th May, 2000 after giving reference of description of land which has been referred in Para 2 of the plaint. Against which, the plaintiff-non-petitioner preferred appeal before the learned First Appellate Court which was allowed vide order dated 14th March, 2001 wherein it was observed that a reference has been made of the suit land in question, but it has not been averred to be an agricultural land and this question can be decided only after adjudication of the dispute as to whether the suit land was agricultural land or not and consequently, after setting aside the order of learned trial Judge, referred the matter back for examination on merits. Hence, this revision petition.

Counsel for petitioner-defendant submits that a specific reference has been made with respect to suit land in Para 2 of the plaint and it is sufficient to hold that it was an agricultural land and the plaint along with documents annexed thereto can be looked into about the suit land being agricultural land which is barred u/s.207 of Rajasthan Tenancy Act and is not triable by the civil court. This fact has completely been misread by the learned First Appellate Court while examining the pleadings of the plaint.

Counsel for respondent, on the other hand, submits that a reference with respect to suit land has been made

in Para 2 of the plaint which only identified for which permanent injunction has been sought but there is no mention that it is an agricultural land, moreso, in Para 13 a specific averment has been made that the suit land is in Abadi Area and if objection is raised by the defendant-petitioner in the written statement that can only be decided as an issue after parties are permitted to lead evidence in support of their case. As such, the learned First Appellate Court has not committed any error in passing the order impugned.

I have considered the submissions of both the counsel and with their assistance perused the material on record.

This fact prima facie remain undisputed that Paras 2 & 13 of the plaint, of which reference has been made, clearly go to show that the plaintiff has only made a reference of suit land for which permanent injunction has been sought and it has not been mentioned as agricultural land. On the contrary, in Para 13 of the plaint, it has been specifically alleged about Abadi Area. I am unable to accept the contention of the petitioner in holding it to be agricultural land on the basis of pleadings of the plaint and so also documents annexed thereto and it can only be examined after objection raised by the defendant-petitioner in the written statement before the competent court of jurisdiction.

I have gone through the finding recorded and find no error under the order impugned passed by the learned First Appellate Court.

Consequently, the revision petition fails and is hereby dismissed.

[Ajay Rastogi],J.

FRBOHRA,JR.P.A.